In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1457

CECIL J. BISHOP, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the evidence did not establish his guilt and that Section 7206(1) of the Internal Revenue Code of 1954 is constitutionally defective for failure to set forth a sufficiently ascertainable standard of guilt.

After a jury trial in the United States District Court for the Eastern District of California, petitioner was convicted of willfully making and subscribing, under the penalties of perjury, income tax returns for the years 1963, 1964, and 1965 that he did not believe to be true and correct as to every material matter, in violation of Section 7206(1) of the Internal Revenue Code of 1954.He was sentenced to 90 days' imprisonment in

a jail-type institution (to be served over 45 consecutive weekends) and five years' probation. The court of appeals reversed and remanded for a new trial, holding that petitioner was erroneously denied a lesser-included offense instruction under which the jury could have found him guilty only of the misdemeanor of filing false documents, in violation of 26 U.S.C. 7207. *United States* v. *Bishop,* 455 F. 2d 612 (C.A. 9). This Court granted the government's petition for a writ of certiorari, reversed the court of appeals, and remanded the case to that court for consideration of the other issues raised by the appeal. *United States* v. *Bishop,* 412 U.S. 346. The court of appeals then affirmed the conviction in a *per curiam* opinion (Pet. App. 29-30). *United States* v. *Bishop,* 485 F. 2d 248 (C.A. 9).

Petitioner's tax returns for the years 1963, 1964, and 1965 significantly overstated the deductible expenses of a walnut ranch which he owned (Tr. 861-862, 947).[1] At trial petitioner, an attorney, did not dispute the falsity of the returns (Tr. 869-870, 1148). The walnut ranch was managed by petitioner's stepmother (Tr. 72). Petitioner gave her weekly checks, which she deposited to a separate bank account, and she paid the ordinary operating expenses of the ranch from that account (Tr. 73-77). At the end of each year, petitioner's stepmother provided him with a detailed accounting of all deductible ranch expenses that she had paid during the year (Tr. 81-84, 91, 95, 135, 162, 168). Petitioner deducted both these items and the weekly payments to

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[1] "Tr." refers to the transcript of proceedings at trial.

his stepmother as ranch expenses on his income tax returns (Tr. 861-862). In this way, petitioner in effect took two deductions for each item of ranch expense his stepmother paid: he took one deduction for the initial transfer of funds to her and a second deduction for the actual expenditure (Tr. 576).

Moreover, the amount petitioner paid over to his stepmother covered not only ranch expenses but also a substantial number of nondeductible personal items, including his weekend entertainment expenses at the ranch (Tr. 73-74). In addition, petitioner improperly claimed deductions for repayments of principal on a number of loans (Tr. 861-862). The following table summarizes petitioner's underreporting of income:

	1963	*1964*	*1965*
Reported net taxable income	$ 1,494	$ 64	$ 6,772
Add: Improper deductions	19,924	17,022	10,063
Actual net taxable income	$21,418	$17,086	$16,835

As can be seen from this recitation of facts, there was ample evidence to support petitioner's conviction under Section 7206(1). Moreover, there is nothing vague or uncertain about the standard of guilt prescribed by that provision; like the federal perjury statute, 18 U.S.C. 1621, it proscribes the willful making of sworn statements without belief in their truth. Petitioner's contention here is nothing more than reiteration of his defense at trial that he believed his returns were truthful. The jury decided that issue against him, and it warrants no further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1974.

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